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7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-167

13 DONOVAN RUSSELL RADACH

4081 Park Center Lane

14 Apt. D

Fremont, CA 94538

15 4291 Stevenson Blvd. #49

Fremont, CA 94538

16 Registered Nurse License No. 339451

Respondent.

17  
18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
22 Department of Consumer Affairs.

23 2. On or about January 31, 1982, the Board of Registered Nursing issued  
24 Registered Nurse License Number 339451 to Donovan Russell Radach (Respondent). The  
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on August 31, 2009, unless renewed.

27 JURISDICTION

28 3. This Accusation is brought before the Board of Registered Nursing

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
2 references are to the Business and Professions Code unless otherwise indicated.

3 STATUTORY PROVISIONS

4 4. Section 2750 of the Business and Professions Code (Code) provides, in  
5 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
6 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
7 2750) of the Nursing Practice Act.

8 5. Section 2764 of the Code provides, in pertinent part, that the expiration of  
9 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
10 against the licensee or to render a decision imposing discipline on the license. Under section  
11 2811(b) of the Code, the Board may renew an expired license at any time within eight years after  
12 the expiration.

13 6. Section 2761 of the Code states:

14 "The board may take disciplinary action against a certified or licensed nurse or  
15 deny an application for a certificate or license for any of the following:

16 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

17 ...

18 "(f) Conviction of a felony or of any offense substantially related to the  
19 qualifications, functions, and duties of a registered nurse, in which event the record of the  
20 conviction shall be conclusive evidence thereof."

21 ...

22 7. Section 490 of the Code provides, in pertinent part, that a board may  
23 suspend or revoke a license on the ground that the licensee has been convicted of a crime  
24 substantially related to the qualifications, functions, or duties of the business or profession for  
25 which the license was issued.

26 8. Section 125.3 of the Code provides, in pertinent part, that the Board may  
27 request the administrative law judge to direct a licensee found to have committed a violation or  
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation

1 and enforcement of the case.

2 9. California Code of Regulations, title 16, section 1444, states:

3 "A conviction or act shall be considered to be substantially related to the  
4 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
5 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
6 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the  
7 following:

8 "(a) Assaultive or abusive conduct including, but not limited to, those violations  
9 listed in subdivision (d) of Penal Code Section 11160.

10 "(b) Failure to comply with any mandatory reporting requirements.

11 "(c) Theft, dishonesty, fraud, or deceit.

12 "(d) Any conviction or act subject to an order of registration pursuant to Section  
13 290 of the Penal Code."

14 10. Penal Code section 311.11(a) states:

15 "Every person who knowingly possesses or controls any matter, representation of  
16 information, data, or image, including, but not limited to, any film, filmstrip, photograph,  
17 negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software,  
18 computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any  
19 other computer-generated image that contains or incorporates in any manner, any film or  
20 filmstrip, the production of which involves the use of a person under the age of 18 years,  
21 knowing that the matter depicts a person under the age of 18 years personally engaging in or  
22 simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony  
23 and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or  
24 by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and  
25 imprisonment."

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1 FIRST CAUSE FOR DISCIPLINE

2 (CONVICTION)

3 11. Respondent is subject to disciplinary action under sections 2761(f) and  
4 490 in that on or about October 10, 2001, in a criminal proceeding entitled *The People of the*  
5 *State of California v. Donovan Radach*, in the Superior Court of the State of California in the  
6 County of Alameda, Case Number 191072-2, Respondent was convicted by his plea of *nolo*  
7 *contendere* of Penal Code section 242 (battery). Respondent was sentenced to serve 60 days in  
8 County Jail. The circumstances surrounding the conviction are that on or about September 30,  
9 2000, Respondent was alleged to have touched an eleven year old girl repeatedly on her vaginal  
10 area when swimming in their apartment complex pool; and that on or about October 14, 2000,  
11 Respondent sat next to another eleven year old girl at the apartment complex pool and repeatedly  
12 asked her to "flash" him.

13 SECOND CAUSE FOR DISCIPLINE

14 (UNPROFESSIONAL CONDUCT - POSSESSION OF CHILD PORNOGRAPHY)

15 12. Respondent is subject to disciplinary action under section 2761(a) in that  
16 he acted unprofessionally when he possessed child pornography, in violation of Penal Code  
17 section 311.11. The circumstances are as follows:

18 a. On or about April 14, 2006, Respondent purchased access to a child  
19 pornography website which was under surveillance by Federal Immigration and Customs  
20 Enforcement officials. Respondent purchased access to the website again on April 16, 2006.

21 b. On or about March 27, 2007, a search warrant was executed by Fremont  
22 Police at the residence of Respondent. The search revealed that a computer located in  
23 Respondent's bedroom contained thousands of images of child erotica, and numerous movie  
24 clips of young girls engaged in sexual activity. In addition, a thumb drive that was seized  
25 contained hundreds of images of child erotica.

26 c. On or about December 9, 2007, Fremont Police executed another search  
27 warrant at Respondent's residence. The search revealed that a computer located in Respondent's  
28 residence contained approximately 300 images of child erotica.

1 THIRD CAUSE FOR DISCIPLINE

2 (UNPROFESSIONAL CONDUCT)

3 13. Respondent is subject to disciplinary action under section 2761(a) in that  
4 he acted unprofessionally. The circumstances are that on or about January 2, 2008, Fremont  
5 Police executed a search warrant at Respondent's place of work, Kaiser Permanente in San Jose,  
6 California. That search warrant resulted in a Kaiser Permanente investigation which revealed the  
7 following:

8 a. From a work computer, Respondent accessed an email containing the  
9 subject line "New lol children virgins free pic big new pas.."¹

10 b. From a work computer, Respondent accessed an email containing the  
11 subject line "Russian T'-een Nude."

12 c. On or about December 20, 2007 Respondent accessed "vladmodels.ru," a  
13 child exploitation modeling website, from a work computer.

14 d. Numerous images of child erotica were found on a work computer to  
15 which Respondent had access.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
18 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License Number 339451, issued  
20 to Donovan Russell Radach.

21 2. Ordering Donovan Russell Radach to pay the Board of Registered Nursing  
22 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
23 Professions Code section 125.3;

24 ///

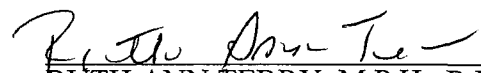
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26 \_\_\_\_\_  
27 1. The term "lol" is an abbreviation for "lolita," a term commonly used to refer to minor  
28 females by individuals seeking or distributing child pornography. The phrase "pas" typically  
indicates that a password is being offered to a website containing the described material.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/30/09

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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